

221878

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-103 (Sub- No. 21X)

**KANSAS CITY SOUTHERN RAILWAY COMPANY
ABANDONMENT EXEMPTION
LINE IN WARREN COUNTY, MS**



ENTERED
Office of Proceedings
MAR 24 2008
F-1 of
Public Record

**REQUEST FOR COMPENSATION
DUE TO INCREASED COSTS OF RESTORING LINE TO SERVICE
CAUSED BY PARTIAL DISMANTLING OF THE GLASS ROAD BRIDGE**

1. Now comes Raymond B. English and James Riffin ("E&R"), who herewith file this Request for Compensation Due to Increased Costs of Restoring Line to Service Caused By Partial Dismantling of the Glass Road Bridge, and say:

BACKGROUND INFORMATION

2. On February 22, 2008, the Board Served its decision In The Matter Of A Request To Set Terms and Conditions ("Decision") in the above entitled proceeding. In its Decision, the Board stated it would "impose our typical OFA terms: (1) payment is to be made by cash or certified check; (2) closing is to occur within 90 days of the service date of this decision; (3) KCSR shall convey all property by quitclaim deed; and (4) KCSR shall deliver all releases from any mortgage within 90 days of closing." Decision at 11. The Board further ordered:

- A. The purchase price for the entire line is set at \$504,615.
- B. The Offerors must accept the terms and conditions established by the Board no later than March 3, 2008.
- C. If the Offerors accept the terms and conditions for the Entire Line, then by March 24, 2008, the Offerors may return to the Board with a request to

determine the compensation, if any, owed by the Kansas City Railway Company (“KCSR”) due to increased costs of restoring the Remainder to service that was caused by the partial dismantling of the Glass Road Bridge (“Bridge”).

- D. KCSR may, by April 14, 2008, respond to Offerors request for compensation.
- E. KCSR must preserve all records, photographs, inspection reports, and any other information relevant to the condition of the Bridge as of October 2, 2007.
- F. Settlement is to occur within 90 days of the service date of the Board’s February 22, 2008 Decision (on or before **Thursday, May 22, 2008**).
- G. Payment is to be made by cash or certified check.
- H. KCSR is to convey all property by quitclaim deed.
- I. KCSR shall deliver all releases from any mortgage within 90 days of closing.

3. On March 3, 2008, the Offerors filed their original Offerors’ Acceptance of Terms and Conditions. In Offerors’ March 3, 2008 Acceptance, Offerors conditioned their Acceptance on four conditions which they had previously stated their Offer to Purchase was subject to. These four conditions were not explicitly stated in the Board’s February 22, 2008 Decision. These four conditions were:

- A. **“E&R desire to acquire the Entire Property, including “any and all appurtenances thereto, and all improvements located thereon, and any and all easements, right-of-ways and rights of ingress and egress related thereto” (§1, PSA), INCLUDING any rail, ties, or other track materials;**
- B. **FREE of all liens and encumbrances (§8, PSA);**
- C. **All closing costs are to be divided equally between the parties, except that each party shall be responsible for its own attorney fees; All items customarily apportioned in connection with the sale of property, including, without limitation, property taxes and assessments, shall be pro-rated between E&R and KCSR based on the number of days in the applicable period during which each party held title to the property (§14, PSA).”**
- D. **Offerors acceptance would be in accordance with the Board’s precedent in *1411 Corporation – Abandonment Exemption – In Lancaster County, PA*, STB Docket No.**

AB-581X (STB served April 12, 2002) ("1411").

4. On March 12, 2008, KCSR filed a Request for Clarification, wherein it asked the Board to Order the sale of the Line be subject only to those conditions imposed by the Board in its February 22, 2008 Decision, and specifically asking that the Board NOT impose Offerors' four conditions specified above.

5. On March 17, 2008, the Offerors filed their Reply to KCSR's Request for Clarification.

6. On March 20, 2008, the Board rendered a Decision wherein it denied Offerors' request to supplement the Board's February 22, 2008 terms with the four additional terms identified above. The Board also Ordered Offerors could withdraw their offer to purchase the Line by March 31, 2008, thereby modifying the Board's February 22, 2008 Decision, which required the Offerors to affirmatively accept the terms and conditions set by the Board in its February 22, 2008 Decision.

7. On March 24, 2008, Offerors filed a Second Acceptance, reiterating their offer to purchase the entire Railway Property, which is the subject of the above entitled proceeding, subject to the terms and conditions stipulated in the Board's February 22, 2008 Decision, and further subject to any revisions of the Board's February 22, 2008 Decision or the Board's March 20, 2008 Decision, which the Court of Appeals for the District of Columbia may order.

**REQUEST FOR COMPENSATION
DUE TO INCREASED COSTS OF RESTORING LINE TO SERVICE
CAUSED BY PARTIAL DISMANTLING OF THE GLASS ROAD BRIDGE**

8. The Offerors herewith Request Compensation Due To The Increased Costs of Restoring The Line to Service Caused By The Partial Dismantling of the Glass Road Bridge ("Bridge"). In support thereof, Offerors say:

9. Attached hereto are:

A. Verified Statements ("V.S.") made by Theodore M. Niemeyer, P.E. ("Niemeyer V.S."); Donald Steele ("Steele V.S."), Joe Buckley ("Buckley V.S."), and James Riffin ("Riffin V.S."). A Verified Statement by Bobby Carpenter, P.E. (Carpenter

V.S.”), ~~will be provided to the Board as soon as it is received by James Riffin.~~

- B. Photographs depicting the Glass Road bridge prior to its partial demolition, and the Glass Road bridge’s present condition.
- C. Photographs depicting the condition of four other timber bridges located on the Line.
- D. A sketch depicting what portions of the Glass Road bridge are usable, and what portions need to be restored.
- E. A spread sheet showing the costs for labor, material and equipment that would be needed to restore the Glass Road bridge into a serviceable condition.

THE GLASS ROAD BRIDGE WAS IN SERVICEABLE CONDITION PRIOR TO ITS PARTIAL DEMOLITION

10. In the body of its February 22, 2008 Decision, the Board indicated that KCSR would have an opportunity to include evidence that the Bridge “would have had to have been replaced before service could have been resumed.” Decision at 5. The first part of this Request for Compensation will address the issue of the condition of the Bridge prior to its partial demolition.

11. The remains of the Bridge were photographed, measured and inspected by Bobby Carpenter, P.E., who has been a Mississippi licensed professional civil engineer for over 27 years, and who has designed, and has overseen the construction of, highway bridges and other structures. Mr. Carpenter’s inspection of the remains of the Bridge found the pilings that had not been destroyed, were in very good condition, the steel beams which carried the bridge over Glass Road, were in very good condition, and the piling caps that had not been removed, were in very good condition. Because the remaining pile caps, pilings and steel beams were in very good condition, it was his professional opinion that they could be used were the bridge to be restored. His inspection of the stubs of the pilings that had been broken off when the bridge was partially demolished, revealed the stubs were in very good condition, and concluded these broken piles were in very good condition before they were broken off. Copies of some 30 + color photographs taken by Mr. Carpenter were forwarded to Mr. Niemeyer, Mr. Steele and to Mr. Riffin. During conversations with Mr. Niemeyer and Mr. Steele, Mr. Carpenter conveyed the measurements he had taken, and discussed the structural characteristics of the Bridge. Carpenter V.S.

12. The remains of the Glass Road Bridge, and four other timber bridges located on the Line, were photographed and inspected by Joe Buckley on February 26, 2008. Mr. Buckley is a recently retired KCSR Bridge and Buildings Supervisor, with over 30 years experience inspecting, maintaining and constructing the railroad bridges not only on this Line, but on the other lines that KCSR presently owns in Mississippi. Mr. Buckley's railroad career began in 1965, when he was hired by the Illinois Central Railroad. His railroad career continued when the Illinois Central merged into the Illinois Central Gulf, continued when the MidSouth Corporation purchased this and other Mississippi rail lines, and continued when KCSR purchased the rail assets of the MidSouth Corporation. Mr. Buckley's inspection of the bridge at MP 225.85 revealed this bridge was in excellent condition. This is significant since this bridge is four years older than the Glass Road bridge, and is presently being utilized. The bridges at MP 228.58, 229.25 and 229.53, structurally, were all in serviceable condition. The bridge at MP 228.58 had no structural deficiencies. Some of the ballast in the headwalls had washed out, and needed to be replaced. The bridges at MP 229.25 and 229.53, had a few piles that needed to be replaced or reposed. The condition of these bridges is very significant, since these bridges are about 15 years older than the Glass Road bridge. Since all of these bridges are older than the Glass Road bridge, and since all of these bridges are in serviceable condition, except for a few minor deficiencies, Mr. Buckley concluded the Glass Road bridge in all likelihood was in serviceable condition before it was partially demolished. V.S. Buckley.

13. Mr. Niemeyer is a registered professional engineer with extensive railroad experience, particularly with regard to railroad bridges. After studying the photographs of the Glass Road bridge, the photographs of the other bridges on the Line, and after extensive consultations with both Mr. Carpenter and Mr. Steele, based on his extensive railroad bridge experience, Mr. Niemeyer concluded in his professional opinion, in all likelihood, the Glass Road bridge was in serviceable condition prior to its partial demolition. V.S. Niemeyer.

14. No evidence could be found which would even remotely suggest the Glass Road bridge was not in serviceable condition prior to its partial demolition. With the exception of the need to remove the vegetation that was growing on the Bridge, and the need to replace some of the cross ties on the Bridge, the Bridge would have been in serviceable condition prior to its partial

demolition.

COST TO RESTORE THE GLASS ROAD BRIDGE

15. Mr. Donald Steele, a Regional Manager for Niemeyer and Associates, P.C., began his railroad career over 40 years ago, when he began working in the engineering department of the Union Pacific Railroad. The majority of his railroad experience was in the Railroads Engineering Department, where he was a Bridge and Building Supervisor doing design, construction and maintenance of railroad bridges. He is a former President of the American Railway and Bridge and Building Association, and a past Director of Committee 10, Structures, Maintenance & Construction, of the American Railway Engineering and Maintenance of Way Association.

16. Mr. Steele was asked to determine the cost to restore the Glass Road Bridge to a serviceable condition. Since the Offerors and KCSR had stipulated the rails south of MP 227.5 had been removed, Mr. Steele was instructed **not to include** the cost of putting rails and cross ties on the Bridge. His instructions were to determine what it would cost to restore those portions of the Bridge which had been removed by the Warren County road crew. He was provided with over 30 color photographs of the remains of the Glass Road bridge, was provided with measurements of the remains of the Bridge, and was provided with extensive engineering information about the Glass Road bridge by Mr. Carpenter. From this information, he created a sketch, see **Exhibit DLS-1**, which depicted the remains of the Glass Road bridge, and indicated graphically what would have to be done to restore the Glass Road bridge back to serviceable condition. Based on the information provided to him, and on the knowledge and experience of Mr. Carpenter, Mr. Niemeyer and Mr. Buckley, Mr. Steele concluded the piles that had not been destroyed, the steel beams, and the remaining caps and end walls, could be used were the Bridge to be restored. Mr. Steele prepared a list of materials that would be needed to restore the Bridge. Based on his prior experience, based on information he obtained after contacting a number of railroad personnel who currently construct and maintain timber railroad bridges, and based on information he obtained from vendors who provide material, equipment and labor needed to construct timber railroad bridges, he estimated the cost of labor to restore the Bridge.

and estimated the cost to rent equipment that would be needed to restore the Bridge. He tabulated all of this information onto a spread sheet, which he labeled **Exhibit DLS-2**. He estimated the cost of labor, including engineering costs, would be \$128,280. He estimated the cost of material to be \$67,340. He estimated the rental cost of equipment that would be needed to restore the Bridge, to be \$33,670. The sum of these three components, came to \$229,290. Steele V.S. |

17. The State of Mississippi assesses a sales tax on all construction projects valued over \$10,000. Remitting this sales tax to the Mississippi Comptroller is the responsibility of the contractor. If the contractor “pre-approves” a project prior to beginning construction, (i.e., tells the Mississippi Comptroller about the project before construction begins), the tax rate is 50% of the regular sales tax rate of 7%. If the contractor fails to “pre-approve” the project, the contractor is assessed a 10% penalty, which is in addition to the sales tax. This sales tax is assessed against **all** construction projects, including those performed by railroads by railroad personnel, even including routine replacement of cross ties, rails and ballast. The sales tax is computed on the total price of the contract. Consequently, if the contractor includes the sales tax in the cost of the project, the sales tax will also be levied against the amount of the sales tax included in the total contract price. In effect, there is a tax on the tax. For the contractor to avoid paying any of the sales tax, the tax that would have to be included in the total contract price, would be $0.035 / 0.965$ or 3.6269 %. Riffin V.S. The sales tax on the \$229,290 labor, material and equipment cost to restore the Glass Road bridge, would be \$8,320. The total cost to restore the Glass Road bridge to a serviceable condition, excluding the cost to place rails and cross ties on the Bridge, using the remains of the Glass Road bridge, would be **\$237,610.00**.

REQUEST FOR COMPENSATION

17. WHEREFORE, for the reasons discussed above, the Offerors herewith request the Board order KCSR to pay to the Offerors the sum of **\$237,610.00**, which represents the “increased costs of restoring the Remainder to service due to the partial dismantling of the bridge.” Rather than the Offerors remitting to KCSR the full purchase price, then having KCSR remit to the Offerors the increased cost to restore service on the Line due to the partial dismantling of the bridge, the

Offerors would suggest this Request for Compensation should be used as an offset against the purchase price.

Respectfully submitted,


Raymond B. English


James Riffin

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of March, 2008, a copy of the foregoing Request for Compensation Due to Increased Costs of Restoring Line to Service Caused By Partial Dismantling of the Glass Road Bridge, was mailed via first class mail, postage prepaid, to **William A. Mullins, Baker & Miller PLLC**, Ste 300, 2401 Pennsylvania Ave, N.W., Washington, DC 20037, attorney for Kansas City Southern Railway Company, and to **Craig Richey**, 315 W. 3rd Street, Pittsburg, KS 66762, attorney for Vicksburg Southern Railroad, Inc.

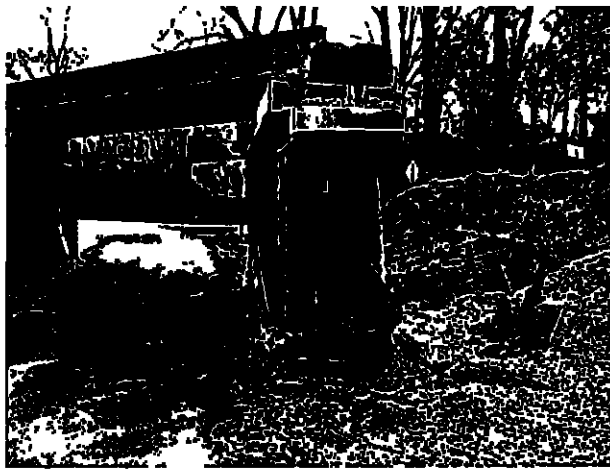

James Riffin



North end - Piles good - Glass Road



N end & Center - Piles good - Glass Road



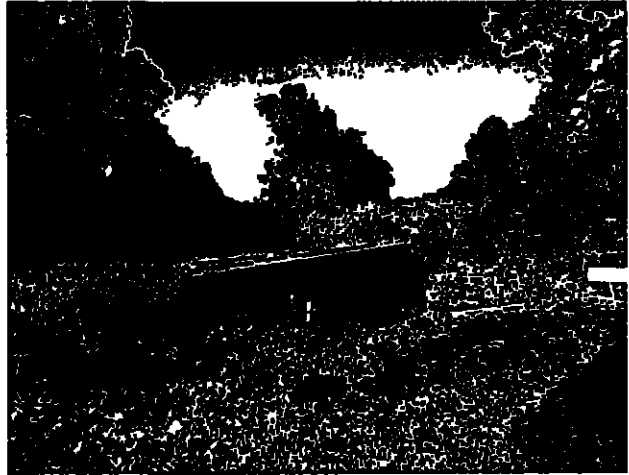
South end - Piles good - Glass Road



Center - Piles good - Glass Road



**Glass Road Bridge before demolition
East side looking West - Glass Road**



**Glass Road Bridge before demolition
South end looking North West**



Bridge at MP 229.25 – Photo by J. Buckley – 2/27/08



Bridge at MP 229.25 – Bridge & Piles in Good Condition – Photo by J. Buckley – 2/27/08



Bridge at MP 229.53 – Photo by J. Buckley – 2/27/08



Bridge at MP 229.53 – Bridge & Piles in Good Condition – Photo by J. Buckley – 2/27/08



Bridge at MP 228.58 – Bridge & Piles in Good Condition – Photo by J. Buckley – 2/27/08



Bridge at MP 229.05 – Bridge & Piles in Excellent Condition – Photo by J. Buckley – 2/27/08

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**KANSAS CITY SOUTHERN RAILWAY COMPANY
ABANDONMENT EXEMPTION
LINE IN WARREN COUNTY, MS**

VERIFIED STATEMENT OF THEODORE M. NIEMEYER, P.E.

1. My name is Theodore M. Niemeyer, P.E. I am the Principal of Niemeyer & Associates, P.C. ("N&A"), a railroad and fixed facility engineering firm headquartered in Ringwood, Illinois. I am a registered Professional Engineer in Illinois and Wyoming. Mr. James Riffin retained N&A to estimate the cost to restore the Glass Road bridge, which was partially demolished by a Warren County, Mississippi road crew on or about January 30, 2008. Mr. Riffin also asked our firm to render a professional opinion as to the likely condition of the bridge before it was demolished.

2. My railroad career started in 1971, when I was employed by the Chicago & North Western Transportation Company ("C&NW"). During my 18 years with the C&NW, I directed and managed numerous railroad projects, including construction of the Powder River Basin Coal Line, from January 1981 to December 1986, in Nebraska and Wyoming. From 1973 through December, 1980, I worked in the Chief Engineer's office. I was involved with all engineering and corporate management facets of the C&NW Branch Line program. My duties included overseeing numerous branch line abandonments, numerous industry and state funded branch line upgrading projects, estimation and valuation of industry track projects system-wide, and licensing agreements. As part of that assignment, I inspected over 3,000 miles of track structure and developed maintenance, rehabilitation and net liquidation value estimates for C&NW Branch Lines, including a few lines that were sold by C&NW for continued operation as short line railroads.

3. In 1989, I entered into private practice, forming Niemeyer & Associates, P.C. N&A has over a dozen degreed professional associates, who had careers working for major railroads prior to joining N&A. N&A provides engineering services to major North American Railroads, Short Lines and other clients requiring railroad fixed facility engineering services. N&A has provided due diligence for acquisitions and railroad projects valued at over \$4 billion Dollars. N&A has been responsible for construction management for hundreds of millions of Dollars of projects on railroad rights-of-way and has designed projects valued in the tens of millions of Dollars. N&A has inspected hundreds of miles of railroad line and numerous structures.

4 I am a life member of the American Railway Engineering and Maintenance-of-Way Association ("AREMA"), member and past Committee Chairman of Committee 8 - Concrete Structures and Foundations, and I am an active member of Committee 9 - Seismic Design for Railroad Structures. I am also a member of the American Short Line & Regional Railroad Association ("ASLRRA") and its newly created Bridge Committee, and a member of the Sub-Committee developing standards for bridge records on Short Lines.

5. On Monday, February 25, 2008, I first spoke with Mr. James Riffin concerning the Glass Road railroad bridge, located at MP 229.80 on the Line that is the subject of the above entitled proceeding ("Bridge"). Mr. Riffin informed me that the Bridge had been partially demolished by a Warren County, Mississippi, road crew, on or about January 30, 2008. He wanted to know what it would cost to restore the Bridge, and he wanted a professional opinion regarding the likely serviceability of the Bridge prior to its demolition.

6. On February 25, 26 and 27, 2008, Mr. Bobby Carpenter, P.E., President of Carpenter Engineering, Inc. of Vicksburg, Mississippi, visited the Bridge, inspected the Bridge, took numerous photographs of the Bridge, and took measurements of the Bridge. All of this information was supplied to N&A. Mr. Donald Steele, a N&A Associate, had a discussion with Mr. Carpenter, in an effort to confirm dimensions, verify remaining construction and condition of the Bridge.

7. I personally reviewed a number of pertinent filings and decisions in the above entitled proceeding, in order to ascertain what information and professional opinions the Surface Transportation Board would be looking for when it addressed the issue of what compensation would be appropriate for the unauthorized demolition of a portion of the Bridge.

8. On March 3, 2008, I received more than 30 photographs depicting the condition of four bridges located north of the Glass Road Bridge, these bridges were located at or near Mileposts 229.53, 229.25, 228.58 and 225.85. These photographs were taken on Wednesday, February 27, 2008, by Mr. Joe Buckley, a recently retired Kansas City Southern Railway Company ("KCSR") Bridge and Building foreman, who has personal knowledge of these bridges. I also reviewed his testimony for these four bridges, as well as for the remains of the Glass Road Bridge.

9. Based on the information that has been provided to N&A, it would appear portions of the remains of the Glass Road Bridge are still in serviceable condition, and could be reused. Specifically: The steel beams over Glass Road, the piers that support the steel beams, and one bent of pilings on the north side of Glass Road. The remains of the north and south abutments can also be reused. All other portions of the Bridge would have to be rebuilt, in order to return the Bridge to its former serviceable condition.

10. According to filings by KCSR in the above entitled proceeding, and other records supplied to N&A, the Glass Road Bridge was originally built in 1923, then was rebuilt in 1966.

It is the newest bridge on the Line that is the subject of the above entitled proceeding. The next newest bridge on the Line is located at MP 225.85. KCSR's filings state the MP 225.85 bridge was rebuilt in 1962, and so is four years older than the Glass Road Bridge. KCSR's filings indicate the bridges at MP 229.53, 229.25, 228.58 were built in the approximate time frame of 1948 to 1952. The MP 225.85 bridge is on the portion of the Line that is currently in service. The MP 229.53, 229.25 and 228.58 bridges are on the portion of the Line that was taken out of service in approximately 1988.

11. Mr. Buckley's inspection of the bridges on the Line are summarized below

- A. MP 225.85: Bridge is in excellent condition. No deficiencies were observed. Bridge is in serviceable condition.**
- B. MP 228.58: Bridge structure is in good, serviceable condition. The north and south headwalls have been partially washed out. After the washed-out material has been replaced, the bridge would be in serviceable condition.**
- C. MP 229.25: Bridge structure is in good condition except for the following:
Bent 1: The cap has shifted, needs to be repositioned on the piles and secured.
Bent 3: Three of seven piles need to be replaced or posted.**
- D. MP 229.53: Bridge structure is in good condition except for the following:
Bent 1: Two of six piles need to be replaced or posted.**
- E. MP 229.80: Glass Road bridge. The remaining piles are in good condition, as are the steel beams. The remaining stubs of the piles that were broken when the bridge was demolished, are in good condition, which indicates these broken piles were in good condition prior to being broken during the demolition process. Prior to the demolition of the bridge, this bridge most likely would have been in serviceable condition other than vegetation that would have had to be removed.**

**GLASS ROAD BRIDGE WAS IN SERVICEABLE CONDITION
PRIOR TO ITS DEMOLITION**

12. I have reviewed the photographs of the remains of the Glass Road Bridge, the in-field notes and observations of the Glass Road Bridge by Mr. Carpenter, and Mr. Buckley's inspection report of the remains of the Glass Road Bridge. Based on this information, it is my professional opinion that the steel beams and remaining piles and caps, could be reused were the Glass Road Bridge to be restored

13. I have reviewed the photographs taken by Mr. Buckley of four other timber bridges on the Line, and Mr. Buckley's inspection notes for these four other bridges. The MP 225.85 bridge

was rebuilt in 1962, and thus is four years older than the Glass Road Bridge. The MP 225.85 bridge spans a significant watercourse, which means many of its piles at the waterline are subjected to moisture and drying, which accelerates deterioration of the piles. This bridge is in good condition, having no reported deficiencies by Mr. Buckley, and is in service. The MP 229.53, 229.25, and 228.58 bridges were built in the approximate time frame of 1948 - 1952, and are approximately 15 years older than the Glass Road Bridge. These bridges span watercourses, which means many of their piles at the waterline are subjected to moisture and drying, which accelerates deterioration of the piles. The MP 228.58 bridge is reported as structurally sound by Mr. Buckley and would be serviceable once the reported headwall washouts had been remediated. Mr. Buckley indicated the MP 229.25 bridge needs one cap to be realigned on its piles and secured, and needs three piles to be replaced or posted. The MP 229.53 bridge needs two piles replaced or posted. According to Mr. Buckley, once these defects are remediated, all of these bridges would be serviceable.

14. The broken-off stubs of the Glass Road Bridge piles that were broken off when the Bridge was demolished, were examined by Mr. Buckley, and were found to be sound. The two areas on a ballast deck bridge where timbers are most likely to become deteriorated are the ballast deck and the timber at the ground surface interface where the timber is subjected to moisture and drying. The abutments, still being in serviceable condition, and all piles at ground level being in serviceable condition is positive evidence of the bridge's condition. In general, tops of piles, caps and stringers on ballast deck bridges are protected to some degree by the deck and tend to have greater longevity. Given the reported condition and age of the four other timber bridges that are located on the Line, the reported condition of the remains of the Glass Road Bridge, **it is my professional opinion that the Glass Road Bridge was in all likelihood, in serviceable condition prior to its demolition.**

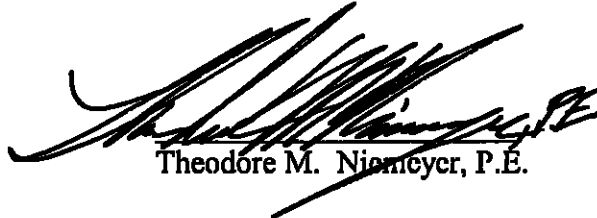
COST TO RESTORE GLASS ROAD BRIDGE

15. Don Steele, an associate of N&A, reviewed dimensions, notes and photographs of Bobby Carpenter, P.E., and reviewed the testimony of Mr. Buckley. Based on this information, he assumed the steel beams, the pilings for the steel beams, one bent of pilings north of Glass Road, and the remains of the north and south abutments, could be utilized were the Glass Road Bridge to be restored. Mr. Steele prepared a preliminary design, which, if utilized, would form the basis for a detailed design from which construction drawings to restore the Glass Road Bridge to a serviceable condition, could be derived. Mr. Steele's design, if utilized, would restore the Glass Road Bridge to a condition that would be similar to the condition the bridge was in prior to its demolition except that it would be using new materials. Based on this preliminary design, Mr. Steele prepared a spreadsheet, which itemizes the various materials that would need to be purchased to restore the Glass Road Bridge to a serviceable condition, and itemize the various labor components to restore the Bridge. Mr. Steele then consulted other bridge engineers including Mr. Benton of Norfolk Southern and Mr. Meyer of Union Pacific along with vendor representatives to ascertain current prices for the various materials. Mr.

Steele based his estimate for labor and contract costs on his past railroad experience and current railroad pay rates. From these various sources, Mr Steele was able to approximate the various unit labor, contract and materials costs. The various costs for restoring the Glass Road Railroad Bridge are summarized on the exhibit DLS-2 of Mr. Steele's Verified Statement. The labor and contract components totaled \$128,280, equipment \$33,670 and materials \$67,340, before adding any sales taxes. The sales/use tax rate in Mississippi is 3.5% as given by Mr. Riffin. Labor, contracted cost, equipment rentals and materials including transportation costs, are subject to this sales tax. **The total cost to restore the Glass Road bridge to a serviceable condition, which condition would be similar to the condition the bridge was in prior to its demolition, would be approximately \$237,610.**

VERIFICATION

I, Theodore M. Niemeyer, P.E., hereby verify under the penalty of perjury, that I am qualified and authorized to submit this Verified Statement and that all of the facts set forth in the foregoing Verified Statement are true and correct to the best of my knowledge, information and belief.

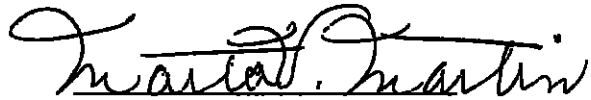

Theodore M. Niemeyer, P.E. Date March 18, 2008

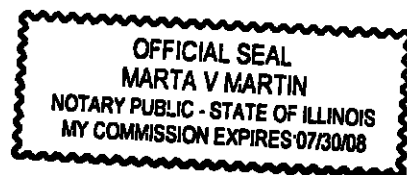
STATE OF ILLINOIS, McHENRY COUNTY, to wit:

I HEREBY CERTIFY, that on this 18TH day of March, 2008, before me, a Notary Public of said State, personally appeared Theodore M. Niemeyer, P.E., known to me or satisfactorily proven to be the person whose name is subscribed to the within Verified Statement, and who acknowledged that he executed the same, for the purposes therein contained.

AS WITNESS my hand and notarial seal.

My commission expires: 7-30-08


Notary Public



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**KANSAS CITY SOUTHERN RAILWAY COMPANY
ABANDONMENT EXEMPTION
LINE IN WARREN COUNTY, MS**

VERIFIED STATEMENT OF DONALD L. STEELE

- 1 My name is Donald L. Steele of Omaha, Nebraska. I have worked for Niemeyer & Associates, P.C. (N&A) of Ringwood, Illinois as a Regional Manager since 1999.
- 2 My railroad career and experience started in 1966, when I was employed by Union Pacific Railroad in the Engineering Department. I have held various positions on the Union Pacific during my tenure from 1966 to 1999. The majority of my experience was in the Bridge Department, a part of the Union Pacific Railroad's Engineering Department, as a Bridge and Building Supervisor doing design, construction and maintenance of bridges. My experience has carried me throughout most of the States west of the Mississippi River.
- 3 I am a past President of the American Railway and Bridge and Building Association. I am a past association Director and a member of Committee 10, Structures, Maintenance & Construction, of the American Railway Engineering and Maintenance of Way Association, (AREMA).
- 4 On February 27, 2008, I was requested to work on a project, by Ted Niemeyer, of N&A, known as the Glass Road Railroad Bridge Project. This project is near Vicksburg, MS and is on the Kansas City Southern Branch Line and is the subject of this proposed abandonment petition. This particular bridge is at the crossing of the Kansas City Southern Branch Line and Glass Road.
- 5 I received emailed photographs of this particular Railroad Bridge in its present condition, was advised that it was partially dismantled and I was requested to make an estimate. To develop that estimate I made a diagram (attached and identified as exhibit DLS-1) of the needed repairs to place this particular bridge back in operating condition to where it would be capable of withstanding railway

traffic. The photographs showed the two backwall bents still in place, the two timber end bents and center bent supporting the steel beam span bridge over the Glass Road were still in place with some minor repair work needed. There also was a row of 6 timber pile that was utilized as a bent still in place. In order to place this bridge back into service it would require the re-establishing 6 spans of bridge of which would include the driving of 24 each pile (4-pile bents). Then 5 each caps would need to be placed onto the new bents as well as the existing 6-pile bent that was not removed. Bridge stringers (8"x16"x30') would then be placed onto the caps as 2-4 ply chords. Then 140' of deck boards (38-4"x10"x16') would then be placed on top of the stringers and then 280' of bridge ballast retainers (14-8"x12"x20'). Then the deck would be waterproofed and 62 cubic yards of ballast material would be placed on top of the ballast boards. Another 10 cubic yards of ballast would be needed for finish grading of the slopes and there would be a need for miscellaneous hardware (nuts, bolts, washers, nails etc). All of the above material would be creosote treated timber except for the hardware. The labor to place material and construct the bridge would be as follows: a 4 man bridge gang with a boom truck and various miscellaneous tools for 22 days, a crane for 16 days, a pile driving hammer and leads for 5 days, a front end loader for 22 days, and compactor for 1 day.

- 6 I received these photographs from Mr. Bobby Carpenter, of Carpenter Engineering, Inc. and also talked with Mr. Carpenter about the photographs and some basic dimensions of the bridge. I also received some information on bridge material costs from 2 sources and they are Mr. Willie Benton of the Norfolk Southern Railroad and a timber material supplier. I also conversed with Mr. George Meyer with Union Pacific Railroad concerning labor costs in today's market on the Railroad.
- 7 For an in depth look at the estimate in amount of \$237,610 please see the attached spreadsheet (identified as exhibit DLS-2) that depicts all of the labor, equipment and material costs.
- 8 All information concerning the estimate was from the photographs and conversations with the various people listed in Item 6. I have read the Verified Statements of Theodore M. Niemeyer, P.E. of N&A and Joe Buckley a former employee of the Illinois Central Railroad, which later became part of the Kansas City Southern Railway.

VERIFICATION

I Donald L. Steele hereby verify under the penalty of perjury, that I am qualified and authorized to submit this Verified Statement and that all of the facts set forth in the foregoing Verified Statement are true and correct to the best of my knowledge, information and belief



Donald L. Steele

3/18/08
Date

STATE OF NEBRASKA, DOUGLAS COUNTY, to wit

I HEREBY CERTIFY, that on this 16th day of March, 2008, before me, a Notary Public of said State, personally appeared Donald L. Steele known to me or satisfactorily proven to be the person whose name is subscribed to the within the Verified Statement, and who acknowledged that he executed the same for the purposes therein contained.

AS WITNESS my hand and notarial seal

My commission expires. 12-30-11 
Notary Public

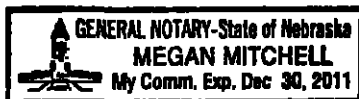


EXHIBIT DLS-1

NIEMEYER & ASSOCIATES, P.C.

4415 Beck Lane
RINGWOOD, ILLINOIS 60072
(815) 653-9400
Fax (815) 728-0220

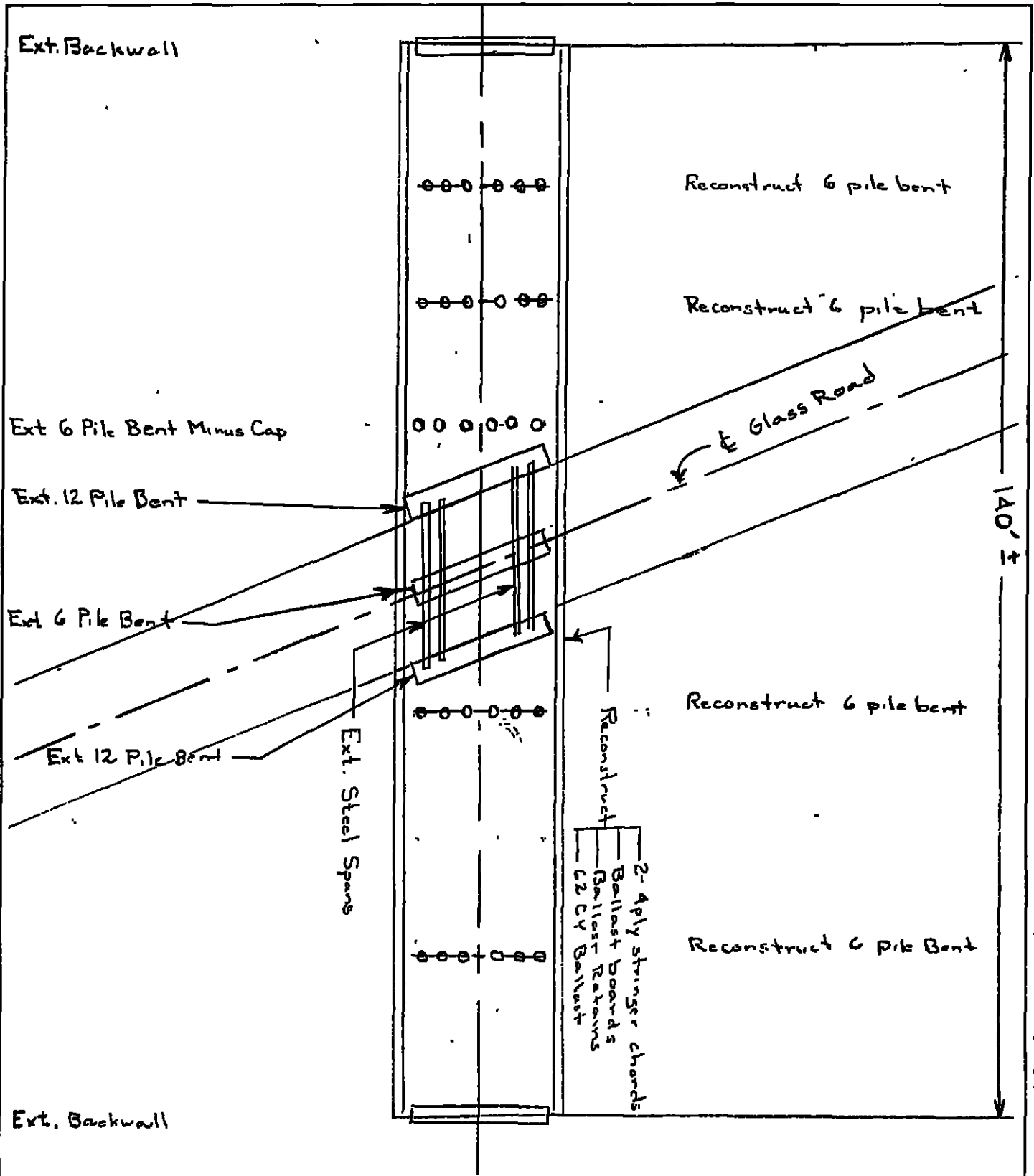
JOB Glass Road Railroad Bridge

SHEET NO. 1 OF 1

CALCULATED BY DLS DATE 3/7/08

CHECKED BY _____ DATE _____

SCALE No Scale



GLASS ROAD RAILROAD BRIDGE

DESCRIPTION	Quantity	Units	Unit Cost	Cost	Material	Quantity	Units	Unit Cost	Material Cost
Mobilization	1	Lump Sum	\$	25,000 00	\$				
Pre-Grading	1	Lump Sum	\$	6,750 00	\$				
Cut Off Pile	24	ea	\$	100 00	\$				
Drive Pile	5	day	\$	3,375 00	\$				
Install Caps	5	ea	\$	675 00	\$				
Install Stringers	5	day	\$	3,375 00	\$				
Install Ballast Boards	140	feet	\$	3,375 00	\$				
Install Ballast Guards	140	feet	\$	48 21	\$				
Deck Waterproofing	140	feet	\$	24 10	\$				
Ballast	1	day	\$	48 21	\$				
Finish Grading	2	day	\$	3,375 00	\$				
De-mobilization	1	Lump Sum	\$	3,375 00	\$				
Engineering	1	Lump Sum	\$	15,000 00	\$				
			\$	15,000 00	\$				
Labor & Contract			\$	128,280 00	\$				
Material Cost			\$	67,340 00	\$				
Equipment			\$	33,670 00	\$				
			\$	229,290 00	\$				
Total before Taxes			\$	8,320 00	\$				
Mississippi State Tax			\$	237,610 00	\$				
TOTAL			\$	237,610 00	\$				

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-103 (Sub- No. 21X)

**KANSAS CITY SOUTHERN RAILWAY COMPANY
ABANDONMENT EXEMPTION
LINE IN WARREN COUNTY, MS**

VERIFIED STATEMENT OF JOE BUCKLEY

1. My name is Joe Buckley. My address is 1847 Buckley Road, Hickory, MS.
2. My railroad career started in 1965, when I was employed by the Illinois Central Railway Company ("IC"). My duties were to maintain, repair, construct and rebuild track structures, bridges and buildings on lines owned by IC in Mississippi. When the MidSouth Rail Corporation bought the Mississippi Illinois Central Gulf lines, I was hired by MidSouth, and continued with my prior duties. When the Kansas City Railway Company ("KCSR") purchased the MidSouth lines, I was hired by KCSR, and continued with my prior duties. At the time of my retirement from KCSR in April, 2005, I was Bridge and Building Foreman for the KCSR lines in Mississippi, including the Vicksburg Industrial Lead, which is the subject of the above entitled proceeding. As Bridge and Building Foreman, my duties were to supervise the inspection, repair, rebuilding and construction of the bridges and structures located on KCSR's Mississippi lines.
3. Prior to my retirement in 2005, it was my responsibility to inspect, and if necessary, to repair, the bridges on the Vicksburg Industrial Lead between MP 222.76 and MP 229.85. For this reason, I am familiar with the bridges that are on this Line.
4. On Tuesday, February 26, 2008, Mr. James Riffin retained me to photograph, inspect, and to report on the condition of the various railroad bridges located on the Vicksburg Industrial Lead between MP 225.6 and MP 229.85, all in Warren County, Mississippi. Mr. Riffin informed me that the Glass Road bridge at MP 229.80 had been partially demolished by a Warren County, Mississippi road crew on or about January 30, 2008. Mr. Riffin also asked me to render a professional opinion as to the likely condition of the Glass Road bridge before it was demolished.
5. On Wednesday, February 27, 2008, I inspected and photographed five railroad bridges located on that portion of the Vicksburg Industrial Lead between MP 225.6 and MP 229.85. All of the photographs attached hereto, represent the bridges depicted thereon as they appeared on the date I took the photographs, with no modifications to them.

6. According to filings by KCSR in the above entitled proceeding, the Glass Road Bridge was originally built in 1923, then was rebuilt in 1966. It is the newest bridge on the Line that is the subject of the above entitled proceeding. The next newest bridge on the Line is located at MP 225.85. KCSR's filings state the MP 225.85 bridge was rebuilt in 1962, and so is four years older than the Glass Road Bridge. KCSR's filings indicate the bridges at MP 229.53, 229.25, 228.58 were built sometime around 1948 to 1952, and thus are about 15 years older than the Glass Road Bridge. The MP 225.85 bridge is on the portion of the Line that is currently in service. The MP 229.53, 229.25, and 228.58 bridges are on the portion of the Line that was taken out of service sometime around 1988.

7. My inspection of the bridges on the Line are summarized below:

- A. MP 225.85: Bridge is in excellent condition. No deficiencies were observed. Bridge is in serviceable condition.
- B. MP 228.58: Bridge structure is in good, serviceable condition. The north and south headwalls have been partially washed out. After the washed-out material has been replaced, the bridge would be in serviceable condition.
- C. MP 229.25: Bridge structure is in good condition except for the following:
Bent 1: The cap has shifted; The cap needs to be repositioned on the piles and secured. Bent 3: Three of seven piles need to be replaced or posted.
- D. MP 229.53: Bridge structure is in good condition except for the following.
Bent 1: Two of six piles need to be replaced or posted.
- E. MP 229.80: Glass Road bridge. The remaining piles are in good condition, as are the steel beams. The remaining stubs of the piles that were broken when the bridge was demolished, are in good condition, which indicates these broken piles were in good condition prior to being broken during the demolition process. Prior to the demolition of the bridge, this bridge most likely would have been in serviceable condition with no deficiencies, other than the vegetation would have had to be removed.

VERIFICATION

I, Joe Buckley, hereby verify under the penalty of perjury, that I am qualified and authorized to submit this Verified Statement and that all of the facts set forth in the foregoing Verified Statement are true and correct to the best of my knowledge, information and belief.


Joe Buckley

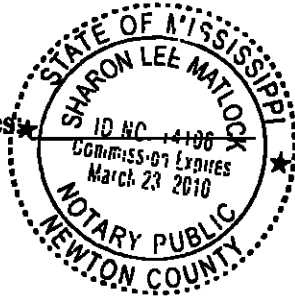
3/14/08
Date

STATE OF MISSISSIPPI, COUNTY OF Newton, to wit:

I HEREBY CERTIFY, that on this 14 day of March, 2008, before me, a Notary Public of said State, personally appeared Joe Buckley, known to me or satisfactorily proven to be the person whose name is subscribed to the within Verified Statement, and who acknowledged that he executed the same, for the purposes therein contained.

AS WITNESS my hand and notarial seal.

My commission expires



Sharon Lee Matlock
Notary Public

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-103 (Sub- No. 21X)

**KANSAS CITY SOUTHERN RAILWAY COMPANY
ABANDONMENT EXEMPTION
LINE IN WARREN COUNTY, MS**

VERIFIED STATEMENT OF JAMES RIFFIN

1. My name is James Riffin. I am over the age of 18. On March 12, 2008, I spoke with Faye Butler, Director of the Sales Tax Division of the Mississippi Comptroller's Office. Her telephone number is 601-923-7341.

2. Ms. Butler stated: Pursuant to MS Code 27-65-23, the State of Mississippi assesses a sales tax on all construction projects valued over \$10,000. Remitting this sales tax to the Mississippi Comptroller is the responsibility of the contractor. If the contractor "pre-approves" a project prior to beginning construction, (i.e., tells the Mississippi Comptroller about the project before construction begins), the tax rate is 50% of the regular sales tax rate of 7%. If the contractor fails to "pre-approve" the project, the contractor is assessed a 10% penalty, which is in addition to the sales tax. This sales tax is assessed against all construction projects, including those performed by railroads by railroad personnel, even including routine replacement of cross ties, rails and ballast. The sales tax is computed on the total price of the contract. Consequently, if the contractor includes the sales tax in the cost of the project, the sales tax will also be levied against the amount of the sales tax included in the total contract price. In effect, there is a tax on the tax. For the contractor to avoid paying any of the sales tax, the tax that would have to be included in the total contract price, would be $0.035 / 0.965$ or 3.6269 %.

3. Ms. Butler further stated that if a railroad performs maintenance on its line, such as replacing piles, cross ties or timbers, the sales tax would be 7%, since a railroad cannot contract with itself. She further stated the sales tax would be assessable against all materials and all labor costs, even when done by railroad employees.

4. Ms. Butler further stated that if work is performed by a contractor that is not licensed in Mississippi, the tax would have to be pre-paid, or the contractor would have to post a bond.

VERIFICATION

I, James Riffin, hereby verify under the penalty of perjury, that I am qualified and authorized to submit this Verified Statement and that all of the facts set forth in the foregoing Verified Statement are true and correct to the best of my knowledge, information and belief.


James Riffin

3/23/08
Date

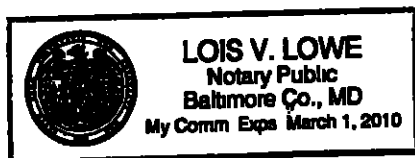
STATE OF MARYLAND, BALTIMORE COUNTY, to wit:

I HEREBY CERTIFY, that on this 23rd day of March, 2008, before me, a Notary Public of said State, personally appeared James Riffin, known to me or satisfactorily proven to be the person whose name is subscribed to the within Verified Statement, and who acknowledged that he executed the same, for the purposes therein contained.

AS WITNESS my hand and notarial seal.

My commission expires: _____


Notary Public



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-103 (Sub- No. 21X)

**KANSAS CITY SOUTHERN RAILWAY COMPANY
ABANDONMENT EXEMPTION
LINE IN WARREN COUNTY, MS**

VERIFIED STATEMENT OF BOBBY CARPENTER, P.E.

1. My name is Bobby Carpenter, P.E. I am over the age of 18 I am the President of Carpenter Engineering, Inc. I have been a registered professional engineer in the state of Mississippi since 1981 I am a member of the American Society of Civil Engineers and the National Society of Professional Engineers.

2 Mr. James Riffin retained Carpenter Engineering, Inc. to evaluate the existing condition of the railroad bridge which crosses Glass Road in Warren County, Mississippi, which railroad bridge is located at MP 229 80 on the Line that is the subject of the above entitled proceeding ("Bridge") This Bridge was partially demolished by a Warren County, Mississippi road crew on or about January 30, 2008.

3. Shortly after the Glass Road bridge was partially demolished by the Warren County road crew, I visited the Site. Since that initial visit, I have visited the Site a number of times. During these visits, I took a number of photographs, some of which are to be included in a filing by Mr. Riffin, took measurements of the remains of the Bridge, and inspected the remains of the Bridge.

4. I have had telephone conversations with Donald Steele and with Ted Niemeyer, both of Niemeyer and Associates, concerning the existing condition of the Glass Road bridge. I e-mailed to Niemeyer and Associates copies of the photographs I took of the Glass Road bridge, and other inspection notes concerning the Glass Road bridge.

5. Mr. Riffin indicated that he has included several of the photographs of the Glass Road bridge which I took with the filings. The photographs I took accurately depict the condition of the Bridge at the time the photographs were taken. The photographs I provided were not altered in any manner.

VERIFICATION

I, Bobby Carpenter, P.E. , hereby verify under the penalty of perjury, that I am qualified and authorized to submit this Verified Statement and that all of the facts set forth in the foregoing Verified Statement are true and correct to the best of my knowledge, information and belief

Bobby Carpenter
Bobby Carpenter, P.E.

3/24/08
Date

STATE OF MISSISSIPPI, WARREN COUNTY, to wit

I HEREBY CERTIFY, that on this 24th day of March, 2008, before me, a Notary Public of said State, personally appeared Bobby Carpenter, P E , known to me or satisfactorily proven to be the person whose name is subscribed to the within Verified Statement, and who acknowledged that he executed the same, for the purposes therein contained

AS WITNESS my hand and notarial seal.

My commission expires: _____

Brenda G Thompson
Notary Public

NOTARY PUBLIC STATE OF MISSISSIPPI AT LARGE
MY COMMISSION EXPIRES: Feb 12, 2010
BONDED TO THE NOTARY PUBLIC UNDERWRITERS

